

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

EDWARD ALLEN ADAMS,	)	
	)	4:05CV03008
Plaintiff,	)	
	)	
v.	)	
	)	ORDER
JO ANNE B. BARNHART,	)	
Commissioner, Social Security	)	
Administration,	)	
	)	
Defendant.	)	

This matter is before the court on its own motion. This is an action for judicial review of a final decision of the Secretary of Health and Human Services. Jurisdiction of this court is pursuant to 42 U.S.C. § 405 (g). By previous order, this court directed plaintiff to appear and show cause why this action should not be dismissed. Filing No. 17. It appears that plaintiff had not been served with copies of the government's motion to dismiss, Filing No. 10.

Plaintiff has responded to the show cause order, contending that he was informed by representatives of the Social Security Administration, within sixty days of the date of decision, that his appeal of the denial of benefits would be forwarded to appropriate persons. It thus appears to the court that plaintiff, who is proceeding pro se, asserts equitable tolling of the jurisdictional time constraints of 42 U.S.C. § 405(g). In the interest of justice, the government's earlier motion to dismiss will be denied without prejudice to reassertion and the government will be ordered to brief the issue of equitable estoppel as well as to submit an answer or other response together with a certified copy of the transcript or record on appeal. Accordingly,

IT IS ORDERED that:

1. The government's motion to dismiss, Filing No. 10, is denied without prejudice to reassertion.
2. The government shall respond to plaintiff's showing and shall file a brief addressing the issue of equitable tolling within thirty days of the date of this order.
3. Plaintiff shall have fourteen days thereafter in which to respond.
4. The government shall file an answer or other responsive pleading, together with a certified copy of the administrative record, within thirty days of the date of this order.
5. If briefing on the merits is necessary, a briefing order will follow.
6. The Clerk of Court is directed to mail a copy of this order to plaintiff Edward Allen Adams at his address of record.

DATED this 13th day of January, 2006.

BY THE COURT:

s/ Joseph F. Bataillon  
JOSEPH F. BATAILLON  
United States District Judge